

Caleb L. McGillvary, Pro Se  
#1222665/SBI#102317G NJSP  
PO Box 861 Trenton, NJ 08625

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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Caleb L. McGillvary	)	
PLAINTIFF	)	CIVIL ACTION NO.
	)	2:23-cv-01195-JLS-SK
V.	)	Hon. Josephine L. Staton, USDJ
	)	Hon. Steve Kim, USMJ
Netflix et al	)	Motion Date: To be determined
DEFENDANT	)	by the Court
	)	
	)	

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DECLARATION IN SUPPORT OF MOTION TO STAY DEMURRER PURSUANT TO  
RULE 83(b) PENDING AMENDMENT OF COMPLAINT, OR IN THE ALTERNATIVE  
FOR EXTENSION OF TIME FOR RESPONSE UNDER RULE 6(b)

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I, Caleb L. McGillvary ("Plaintiff"), hereby declare  
pursuant to 28 U.S.C. 1746 the following:

1.) I am the pro se plaintiff in the above-captioned  
matter.

2.) On January 9, 2024, I placed my motion for leave  
to file a second amended complaint in this action in the  
institutional mailing system here where I'm incarcerated at  
NJ State Prison. My motion was therefore filed pursuant to the  
prison mailbox rule on this date.

3.) As of today's date, my motion for leave to amend  
has not been disposed of, or if it has, I have not received  
notice thereof from the Court.

4.) The defendants' demurrer, requesting to dismiss

and to strike my First Amended Complaint under Rule 12 and Cal. Code Civ. Proc. 425.16; was filed second in time, and will be moot if the Court grants my motion and files my proposed Second Amended Complaint. Additionally, the Defendants' motions involve complex issues of law which were evidently prepared by a team of highly-experienced litigators with vastly superior resources to the prison law library I must contend with. It will surely require a lot of shepardization and legal research to prepare a meaningful response to such an intensely intricate set of demurrers.

5.) I am currently incarcerated in a maximum security prison which has severely restricted access to research and law library facilities. I am only permitted 5 hours at the law library once every 6 days, during which time I may research caselaw, print documents, or make copies of legal documents. Sometimes guys in the mess hall jump on each other's heads or stab each other and the whole place gets locked down, which means that law library gets cancelled. I have had a clean disciplinary record for years, so any such delay is through no fault of my own. Despite my good faith and diligent effort, these circumstances make it so that legal research and preparation of documents is a much slower process for me than it is for defendants, who have all the resources of a dozen highly-experienced lawyers working for firms that have unlimited cost-plus teams of paralegals and experts at their disposal. It is therefore necessary for me to have an additional 60 days to respond pro se to the staggering amount of research and

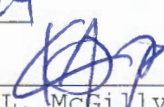
preparation said represented defendants have put into their briefs.

6.) For all the foregoing reasons, and for all the reasons in my attached motion, I request in good faith that the Court should grant my motion to stay Defendants' demurrer pending disposition of my motion for leave to file a Second Amended Complaint; or in the alternative, for extension of time to respond for 60 days from the date of the order granting this motion.

I declare under penalty of perjury that the foregoing statements are true and accurate.

Executed this 1<sup>st</sup> day of MARCH, 2024

Date: 3/1/24

  
\_\_\_\_\_  
Caleb L. McGillvary, ProSe  
#1222665/SBI#102317GNJSP  
PO Box 861, Trenton, NJ08625


PROOF OF SERVICE

I, Caleb L. McGillvary, declare pursuant to 28 U.S.C. 1746 that on today's date, I placed in the institutional mailing system here where I'm incarcerated at NJ State Prison 3rd & Federal Streets Trenton, NJ 08625; with First Class Postage prepaid to be sent via USPS Mail; the original of my motion for an order granting a stay of Defendants' pending demurrers; ECF 147, 151, 152; pursuant to Rule 83(b) pending disposition of Plaintiff's motion for leave to amend; or in the alternative for extension of time to respond pursuant to Rule 6(b); to the Clerk of the Court at USDC-CDCA 255 E. Temple St. Rm 180 Los Angeles, CA 90012; and, pursuant to this Court's 1/25/24 Order, ECF 94, and L.R. 5-3.2, have relied upon the Clerk to send by notice of electronic filing a copy of each said document to Counsel for Defendants Scott C. Hawkins at 2220 Tulare St., 5th Floor Fresno, CA 93721, Matthew S.L. Cate at 1909 K St. NW, 12th Floor Washington, DC 20006-1157, Howard M. Rupp at 615 N. Paulina Ave Redondo Beach, CA 90277, and Cydney Swofford Freeman at 865 S. Figueroa St., 24th Floor Los Angeles, CA 90017-2566. I further declare that no other Defendants have yet appeared in this matter, to my knowledge.

I hereby invoke the prison mailbox rule.

I declare under penalty of perjury that the foregoing statements made by me are true and accurate.

Executed this 1<sup>st</sup> Day of MARCH, 2024

  
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